

**United States Senate**  
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS  
WASHINGTON, DC 20510-6175

May 11, 2016

The Honorable Gina McCarthy  
Administrator  
U.S. Environmental Protection Agency  
Office of Emergency Management  
1200 Pennsylvania Ave., NW  
Washington, D.C. 20460

Dear Administrator McCarthy:

We are writing to urge the Agency to extend the comment deadline and voice several process concerns for the proposed rule on EPA's Accidental Release Prevention Requirements: Risk Management Program Under the Clean Air Act, Section 112(r)(7) for an additional 30 days.

We are asking this even though EPA has informed stakeholders that the Agency has rejected the many requests for an extension of the deadline to file comments for EPA's proposed RMP changes. Given EPA's recent actions, it is concerning that the Agency appears intent on fast-tracking a complex proposal that will have a major impact on the regulated community and the future effectiveness of the RMP program.

From the outset, we are concerned that EPA is not engaged in a good-faith effort to fulfill the intent of the requirements set forth in the Regulatory Flexibility Act (RFA), which are meant to ensure that regulatory burdens on small businesses are minimized early in the rulemaking process. For example, the deadline for Small Entity Representative (SER) comments was December 9<sup>th</sup>, while EPA sent the proposed rule to the Office of Management and Budget (OMB) on December 21<sup>st</sup>, calling into question whether the SER comments could have been seriously considered in such a short time. In addition, the Small Business Advocacy Review panel report was not completed until February 19<sup>th</sup>—two months after the proposed rule went to OMB and only five days before the pre-publication of the proposed rule, suggesting that the report had no material impact on the proposal.

Furthermore, the Agency is not providing enough time for all stakeholders to meaningfully consider the proposed rule and provide crucial feedback on the technical challenges of the rule. For instance, EPA is only providing 60 days to review and comment on almost 300 supporting documents that cover a range of more than 100 safety topics. The Agency's proposal represents the most significant change to the program since it was created and has serious ramifications for a broad range of industries and communities across the country. Many of these modifications to

RMP are unproven and are not sufficiently justified by EPA. In fact, EPA admits in its summary of the proposal that they cannot quantify the safety benefits that would result from its proposed revisions.

Indeed, a thorough process that considers stakeholder input is all the more critical because several components of EPA's proposal appear to be unsound and lacking of a legitimate enhancement to safety. Specifically, stakeholders have voiced concerns regarding the proposed changes to the auditing process that may be creating an unachievable mandate to use third party safety auditors, which are in very short supply. Additionally, the Agency is proposing a new requirement to perform a safer alternatives analysis that EPA determined long ago is unnecessary and would not produce additional safety benefits. Before finalizing the rule, EPA must work with stakeholders to address these and other policy concerns so the rule will realistically work as intended in various facilities.

EPA also appears to be out of sync with other agencies that share jurisdiction over the safety and security of chemical facilities. For example, the Agency is proposing major changes to the auditing requirements under RMP despite the fact that OSHA found no significant issues with current auditing procedures as part of its findings from the OSHA Process Safety Management National Emphasis Programs. Furthermore, the increased access to site-specific information does not appear to line up with the protections that the Department of Homeland Security has placed on sensitive information so it does not fall into the wrong hands. Better inter-agency coordination will ensure the rule does not place duplicative or conflicting requirements on the regulated community.

In light of the many concerns that have been raised and the short timeframe since the release of the proposed rule, we strongly encourage the Agency to provide the public a reasonable extension to the comment period and to allow for sufficient time to make some much-needed improvements.

Sincerely,



James M. Inhofe  
Chairman



David Vitter  
U.S. Senator



John Barrasso  
U.S. Senator



Shelley Moore Capito  
U.S. Senator



Deb Fischer  
U.S. Senator



M. Michael Rounds  
U.S. Senator



Dan Sullivan  
U.S. Senator



Joe Manchin III  
U.S. Senator



Bill Cassidy  
U.S. Senator